



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/171983

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 10, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 10, 2016, at Racine, Wisconsin.

The issue for determination is whether the petitioner timely appealed the Department's termination of his Personal Care Worker hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], RN, BSN

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. On February 24, 2015 the petitioner's provider submitted a prior authorization request for Personal Care Worker (PCW) hours. They requested 7 hours per week of PCW time, 24 hours per year of as needed PCW time, and 7 hours per week of PCW travel time with a requested start date of February 17, 2015. The later submitted a second request with the same number of hours, but a later start date of February 26, 2015. This request was approved from February 26, 2015 to February 25, 2015.
3. On October 15, 2015 the petitioner's provider submitted a prior authorization amendment requesting additional hours. A nurse consultant reviewed this request.
4. In their review the Department found that the petitioner's provider had completed three separate Personal Care Screening Tools (PCSTs) for the petitioner. The first PCST completed on February 17, 2015 allocated 3.5 hours per week of PCW time. The second PCST completed on the same day allocated 7 hours per week of PCW time. The third screen completed on August 20, 2015 allocated 16 hours per week of PCW time.
5. On November 9, 2015 the Department sent the petitioner a notice stating that they were denying his request to amend his PCW hours. The notice further stated that the Department was terminating the petitioner's PCW hours that they had previously approved. A nurse consultant had not reviewed the PCST tools and prior authorization requests until the amendment. The nurse consultant determined that no PCW time should have ever been approved. The notice stated that the petitioner had 45 days or until December 24, 2015 to appeal this denial/termination.
6. On February 10, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### **DISCUSSION**

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a). In this case the denial notice was sent November 9, 2015. The appeal was filed on February 10, 2016. This is beyond the 45 day deadline, and the appeal, therefore, was untimely. When an appeal is untimely, the Division of Hearings and Appeals does not have jurisdiction to decide whether the department's action was correct or incorrect.

I note that some Personal Care Services are a covered service by Medicaid. *Wis. Admin. Code DHS §107.112(1)(a)*. Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under Wis. Admin. Code DHS §107.11(2), that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*.

If the petitioner still feels that he needs PCW hours, his provider may submit a new prior authorization request for PCW hours. He would have separate appeal rights with the new request. I have no jurisdiction in this case to determine whether the denial and termination of PCW services was correct.

### **CONCLUSIONS OF LAW**

The petitioner timely appeal of the Department's termination of his Personal Care Worker hours is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

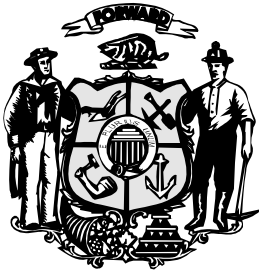
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of April, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 13, 2016.

Division of Health Care Access and Accountability